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UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

<p>APOTHECARY MOVEMENT, LLC, a Utah limited liability company,</p> <p>Plaintiff,</p> <p>vs.</p> <p>BH ELEGANT LINENS, LLC dbas AA WHOLESALE DEALS a New York limited liability company,</p> <p>Defendant.</p>	<p>Case No.: 2:23cv00845-HCN-DAO</p> <p>OBJECTON TO DECLARATION [DOC 95]</p> <p>Judge Howard C. Nielson, Jr.</p>
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COMES NOW, Plaintiff, through counsel, and pursuant to DUCivR 7-1(b)(3), and respectfully submits this *Objection to Declaration* (Doc 93).

DUCivR 7-1(a) only permits a motion, opposition and reply, DUCivR 7-1(b) and (d) only permit evidence to be filed with a motion, opposition and reply, and DUCivR 7-1(a)(9) states, “Unless otherwise ordered, the court will not consider additional memoranda.”

It is unclear under what rule Defendant purports to file a *Declaration* supporting the *Motion to Dismiss* 34 days after Defendant filed the *Motion to Dismiss* (Doc 91), 15 days after

Plaintiff filed its *Opposition* (Doc 92), two days after Defendant filed his *Reply* (Doc 93), and one day after Plaintiff objected to the evidence included in the Reply (Doc 94). Defendant's *Declaration* is untimely.

Defendant's *Declaration* is also prejudicial as Plaintiff does not have the opportunity to substantively respond. If the Court intends to consider the late-filed *Declaration*, it should permit Plaintiff to file a responsive *Declaration* addressing the points raised.

The *Declaration* is further objectionable based on Federal Rules of Evidence, Rules 602, and 801.

Rule 602 states, "A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." Defendant's statements in paragraph 9 of the *Declaration*, including, "I have no memory or record of it . . ." and "I do not believe that Plaintiff saw the message . . ." make clear that the statements in the Declaration are Defendant's assumptions and speculations, and not based on actual knowledge.

Rule 801 defines hearsay as "a statement that: (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement." Rule 802 states "hearsay is not admissible." Here, Paragraphs 1, 2, 3, 5, 6, 8 of the *Declaration* purport to summarize out of court statements, and this Court should not consider them.

Conclusion

For the reasons set forth herein, this Court should sustain Plaintiff's objection to the late filed *Declaration* (Doc 95) and not consider it. However, if the Court intends to consider it, this Court should permit Plaintiff to file a responsive *Declaration* addressing the points raised.

DATED this 3rd day of July 2025.

CAMERON RINGWOOD, LC

/s/ Jordan K. Cameron
Jordan K. Cameron

Certificate of Service

I, the undersigned, certify that on this 3rd day of July 2025, I caused a true and correct copy of the foregoing to be served via ECF filing on the following:

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